



August 27, 2018

Adam Bialek
212.915.5143 (direct)
Adam.Bialek@wilsonelser.com

By ECF and FACSIMILE (212-805-0224)

EMERGENCY RESPONSE REQUESTED

The Honorable Paul G. Gardephe
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2204
New York, NY 10007

Re: Pearson Education Inc. et al. v. Doe 1 D/B/A Anything You Can
Imagine et al
Our Client : Borgasorus Books
Docket No. : 18 CV 07380 (PGG)

Dear Judge Gardephe:

We are in the process of being engaged to represent Defendant Borgasorus Books in the above-referenced matter. We write on an emergency basis pursuant to our conversation with your Clerk (John) and in compliance with your Individual Rules. We are in receipt of an Order to Show Cause for a Preliminary Injunction and an Expedited Discovery Order. Pursuant to Your Honor's Order, a response is due this afternoon at 5 p.m. We are seeking an extension of the deadlines by two (2) days so that we can speak with Plaintiffs' Counsel and try to resolve the issue or in the alternative to oppose the Injunction and Expedited Order. The request is based on Counsel first being contacted today and the time necessary to gather relevant facts and prepare an appropriate response.

Pursuant to the Order to Show Cause, the date upon which the Defendant was to have been given notice is vague. However, Paragraph 4 of the Alternative Service Order provides as follows:

It is FURTHER ORDERED that Plaintiffs shall provide notice of this Ex Parte Order and Plaintiffs' papers in support of the Application to all the parties necessary to identify Defendants' Accounts with Financial Institutions by Friday, August 17 at 5 p.m.

150 East 42nd Street • New York, NY 10017 • p 212.490.3000 • f 212.490.3038

Albany • Atlanta • Austin • Baltimore • Beaumont • Boston • Chicago • Dallas • Denver • Edwardsville • Garden City • Hartford • Houston • Indiana • Kentucky
Las Vegas • London • Los Angeles • Miami • Michigan • Milwaukee • Missouri • New Jersey • New Orleans • New York • Orlando • Philadelphia • Phoenix
San Diego • San Francisco • Sarasota • Stamford • Virginia • Washington, DC • Wellington • White Plains

wilsonelser.com

Plaintiffs did not serve the papers on the Defendant until the evening of August 19, 2018 (a Sunday) and the Defendant did not receive the papers until the next day, arguably two or three days late. The undersigned counsel was contacted by the Defendant Borgasorus's insurer today and requested to assist, although formal coverage may not have been determined as of yet. I first communicated with the Defendant this afternoon and we are obtaining the relevant information as I write this.

In the interim, I attempted to contact Plaintiffs' counsel, Kerry Mustico, from the Washington D.C. law firm of Oppenheim & Zebrak. I spoke with a paralegal, Elizabeth, who advised that Ms. Mustico was not in. I left a message for her. I also asked to speak with the other two lawyers who were on the pleadings, Matthew Oppenheim and Matthew Fleischman. Neither of them were available. I left messages for them as well. I then asked to speak with the paralegal on the file and she was also unavailable. Mr. Fleischman has since left me a voicemail and I returned his call and left him another message.

This case involves the alleged unauthorized sale of books. While there are five plaintiffs, the pleading appears to only allege that the Defendant Borgasorus sold books from only three of the plaintiffs.

A Temporary Restraining Order is already in place so a short adjournment of the deadlines will not prejudice the Plaintiffs. Accordingly, the Defendant Borgasorus Books respectfully requests that its time to respond to the Order to Show Cause be continued until 5 p.m. on August 29, 2018. No prior request for such relief has been made.

Due to the time constraints, we request Your Honor's consideration on an emergency basis. Should you have any questions or comments, please let us know.

Respectfully submitted,

Wilson Elser Moskowitz Edelman & Dicker LLP



Adam R. Bialek

cc: Kerianne Losier, Esq.

Plaintiff's Counsel (BY ECF)
Appearing Defendants' Counsel (BY ECF)